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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RICHARD STARK et al., Plaintiffs and Appellants, v. MARTIN WITHROW, Defendant and Respondent.	B214957 (Los Angeles County Super. Ct. No. SC099035)

APPEAL from an order of the Los Angeles County Superior Court, John Kronstadt, Judge. Affirmed.

Blakely Law Group, and Brent H. Blakely for Plaintiffs and Appellants.

Hadsell Stormer Keeney Richardson & Renick, Randy Renick and Natalie Nardecchia for Defendant and Respondent.

Plaintiffs and appellants Richard and Laurie Lynn Stark (Starks) appeal from an order awarding defendant and respondent Martin Withrow $15,000.00 in attorney fees following entry of a judgment of dismissal in Withrow's favor, after he prevailed on a special motion to strike the Starks' complaint. The Starks contend the trial court abused its discretion concerning the scope and amount of fees awarded. We conclude the Starks have failed to demonstrate the fee award was an abuse of discretion, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Starks sued Withrow, their former employee, and Withrow's former attorney (who is not a party to this appeal), for civil extortion, slander, intentional infliction of emotional distress and wrongful interference with prospective economic advantage. The complaint alleged that three communications between the attorney and the Starks, related to Withrow's claim that his employment had been wrongfully and discriminatorily terminated, constituted extortion as a matter of law.

Withrow filed a cross-complaint, a demurrer and a special motion to strike all causes of action in the complaint, pursuant to Code of Civil Procedure section 425.16, subdivision (b)[1] (the SLAPP [Strategic Lawsuit Against Public Participation] motion). The trial court granted the SLAPP motion, and dismissed the underlying action. We subsequently affirmed that ruling. (*Stark v. Withrow* (November 20, 2009, B212070) [nonpub. opn].)

Withrow filed a motion seeking $35,382.37 in attorney fees, as prevailing party on the SLAPP motion. (§ 425.16, subd. (c).) After briefing and a hearing, the trial court reduced the compensable attorney fees award to $15,000.00, and granted Withrow's motion. The Starks appeal.

DISCUSSION

The Starks contend that Withrow's counsel failed to justify or provide sufficient evidence to support the request for attorney fees in this matter. As a result, the Starks

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[1] All further statutory references are to the Code of Civil Procedure.

insist Withrow's fee request should either have been denied altogether or, at a minimum, be reduced significantly from the $15,000 award made by the trial court. They are wrong.

The Starks acknowledge, as they must that, as prevailing defendant, Withrow is entitled to recover his reasonable attorney fees and costs. (§ 425.16, subd. (c); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (*Ketchum*).) The proper, or "lodestar" measurement begins by multiplying the number of hours reasonably spent by a reasonable hourly rate; i.e., the "hourly rate prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) An appropriate fee award should include compensation for all time reasonably spent pursuing plaintiff's claims. (*Ketchum, supra,* 24 Cal.4th at pp. 1131, 1141.)

The trial court has broad discretion with respect to attorney fees awards. (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322; *Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249-1250.) In the context of a SLAPP motion, that discretion "is . . . to be exercised so as to fully compensate counsel for the prevailing party for services reasonably provided to his or her client." (*Horsford v. Board of Trustees of California State University.* (2005) 132 Cal.App.4th 359, 395, citing *Ketchum, supra,* 24 Cal.4th at p. 1133.) Standard principles of appellate review apply. An order awarding attorney fees to a prevailing party on a SLAPP motion is reviewed for abuse of discretion. (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661.)] And, "'"[a]ll intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent and error must be affirmatively shown."' [Citation.]" (*Ketchum, supra,* 24 Cal.4th at p. 1140.) As the party challenging the fee award, it is the Starks' burden to provide an adequate record to assess error, and any failure to do so will be resolved against them. (*Id*. at pp. 1140–1141; see also *Tuchscher Development Enterprises, Inc v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1248 [appellant's failure to support argument that billing was unreasonable and duplicative by

citation to the record or explanation of which fees are inappropriate provides no basis for disturbing trial court's ruling].)

The Starks maintain the trial court abused its discretion in awarding Withrow's attorney fees, both because there is insufficient evidence to support an entitlement to the total amount of fees Withrow sought, and because there is insufficient evidence that the rates billed were reasonable.[2]

In support of the fee motion, Withrow submitted a rate schedule for attorneys at the firm representing him, and a declaration by attorney Natalie Nardecchia summarizing the educational background and professional experience of each attorney who participated in the preparation of the SLAPP motion, and itemizing his or her time spent on various tasks. The tasks were organized into four categories: (1) reviewing and researching legal issues raised by the Starks' complaint, and development of legal strategies to defend against them; (2) research for and preparation of the SLAPP motion and demurrer,[3] and Withrow's response to the Starks' opposition to the SLAPP motion; (3) Nardecchia's preparation for and time participating in the hearing on the SLAPP motion; and (4) preparation of the motion for attorney fees. Withrow did not request a multiplier. And, as a cautionary measure, Withrow's total fee request of $39,313.75 was further reduced by 10 percent "to account for any duplication or unnecessary time" his counsel may have spent, for a final fee request of $35,382.37.

The Starks contend Withrow failed to meet his initial burden to establish the reasonableness of the fees incurred because his counsel failed to submit timesheets, billing statements or any "other documentation or records sufficient to establish an entitlement to fees." The Starks complain that "block summaries" contained in

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[2] While the Starks have also urged us to eliminate entirely the trial court's attorney fees award to Withrow, we decline the invitation. Even the Starks acknowledge that, as prevailing party on the SLAPP motion, Withrow is *entitled* to his attorney fees and costs. The only question before us is whether the amount of fees awarded was reasonable.

[3] Time entries were reduced by 50 percent in this category if an attorney had recorded time working on both the SLAPP motion and the demurrer.

Nardecchia's declaration make it impossible to ascertain what time was devoted to specific tasks, or to justify the time purportedly spent on the four identified categories of tasks, so as to enable them to ascertain whether there was any improper overlapping of time spent. In short, the Starks claim that without time records detailing "just what was charged and why," they cannot ascertain whether Withrow's fee request is reasonable, and there is no requirement that they "take [his] word" that it is.

The Starks are mistaken. It is well-established "that an award of attorney fees may be based on counsel's declarations, without production of detailed time records." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; *Steiny & Co. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285, 293 ["there is no legal requirement that [billing] statements be offered in evidence"]; *Padilla v. McClellan* (2001) 93 Cal.App.4th 1100, 1107 [courts deciding attorney fee motions rely on "evidence in the form of declarations only, not live testimony, and detailed billing records are not required to support an award."") Withrow's counsel provided a declaration detailing the experience and expertise of the attorneys participating in preparing the SLAPP motion, and describing the work he or she performed. That was sufficient.[4]

The Starks also contend Withrow's counsel failed sufficiently to establish the reasonableness of the amount of fees requested, or to substantiate that its hourly rates are reasonable for this "simple tort case." Inefficient or duplicative efforts by counsel may not be compensated. (*Ketchum, supra*, 24 Cal.4th at p. 1132.)

Withrow's motion was supported with a declaration by Theresa Traber, a local attorney with vast experience in civil rights litigation. Traber declared that the hourly rates charged by Withrow's counsel in this case were reasonable and well within the

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[4] Even though Withrow was not required to produce itemized time sheets, his counsel offered to make those supporting billing statements, detailing the time spent by each attorney, available to the trial court for *in camera* review. The court declined the offer as unnecessarily time-consuming, expensive and unlikely to reveal any more useful information than had already been presented to the court.

range of the prevailing hourly rates for comparable legal services in the community. A declaration from a local attorney may constitute sufficient evidence of an appropriate billing rate. (See *Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 903.) In response, the only evidence the Starks offered to buttress their claim that the rates charged by Withrow's counsel were excessive, were four unauthenticated articles regarding trends in nationwide legal rates, changes in billing practices and law firm productivity. Three of those articles discussed the same 2007 survey, and none of them mentioned relevant legal rates in the Los Angeles or Southern California legal communities. Courts look to prevailing rates in the community where the case is litigated to determine the appropriate market rate. (*MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13; *Carson v. Billings Police Dept.* (9th Cir. 2006) 470 F.3d 889, 891.)

As for the total number of hours for which fees were requested, the trial court recognized that a substantial amount of time for which Withrow's counsel sought recovery was devoted to the "learning curve" counsel faced getting up to speed on SLAPP motions, and refused any fee recovery for that educational time. The court found Withrow's initial fee request unreasonable. It reduced the compensable hours in each task category to reflect what the judge found, based on his own professional experience and his particular familiarity with this action, to be a reasonable amount of time to have devoted to each task and a concomitantly reasonable rate, and awarded only $15,000, more than 60 percent less than what Withrow sought. Relying on *Maughan v. Google Technology, Inc.*, *supra*, 143 Cal.App.4th at p. 1249, the Starks insist "a reasonable time spent on an anti-SLAPP motion involving complex issues and newly developed law is approximately 50 hours," or one attorney work week. We cannot agree with this "upper limit" as a definitive rule. According to the guidelines established by the Supreme Court, every fee application under section 425.16, subdivision (c) must be assessed on its own merits, taking into account what is reasonable under the circumstances. (*Ketchum, supra,* 24 Cal.4th at p. 1132; see also *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 561 [rejecting a similar invitation to

adopt the 50-hour figure used in *Maughan* as a per se rule, as a violation of the case-by-case approach articulated in *Ketchum*, and a deprivation of the broad judicial discretion envisioned by that decision].) Nevertheless, it is worth noting the fees awarded here are equivalent to exactly the measure advanced by the Starks—one 50-hour work week at $300 per hour, the lowest hourly rate charged by any of Withrow's attorneys.[5] On this record, the Starks have failed to establish that the trial court acted so arbitrarily or irrationally as to constitute an abuse of discretion. (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist., supra*, 106 Cal.App.4th at p. 1248.)

Withrow seeks and is entitled to his costs and attorney fees incurred in connection with this appeal. "'A statute authorizing an attorney fee award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise.' [Citation.] Since section 425.16, subdivision (c) provides for an award of attorney fees and costs to a prevailing defendant on a special motion to strike, and does not preclude recovery of appellate attorney fees by a prevailing defendant-respondent, those fees are recoverable. [Citation.]" (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, *supra*, 47 Cal.App.4th at p. 785.)

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[5] The Starks assert that even a 50-hour work week is too much for this simple tort case. But, as is readily apparent from the lengthy discussion in our decision in the underlying action, as to why we concluded the communications at issue did not constitute unlawful extortion and the dissent's vigorous disagreement with that conclusion, this matter was far from "straightforward."

DISPOSITION

The order awarding attorney fees to Withrow is affirmed. Withrow shall recover his costs and attorney fees on appeal, the amount of which shall be determined by the trial court.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.